IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Purshottam Lal.
vs.
Mohan Lal.

S.B.CIVIL SECOND APPEAL NO.12/1983 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 21.7.1982 PASSED BY SHRI HARI PRASAD, CIVIL JUDGE, UDAIPUR IN CIVIL APPEAL NO.22/1980.

DATE OF JUDGMENT ::: 7.2.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.R Mehta & Mr.RK Purohit, for the appellant.
Mr. JP Joshi, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The appellant/plaintiff is aggrieved against the judgment and decree of the trial court dated 26.10.1979 passed in civil original suit no.32/1977 dismissing it

and which was upheld by the first appellate court vide judgment and decree dated 21.7.1982.

Brief facts of the case are that the plaintiff let out the suit property to one Kishan Lal by oral agreement dated 4.2.1955. Said tenant Kishan Lal died. The plaintiff filed a suit for eviction impleading Mohan Lal son of Kishan Lal as defendant and pleaded that the suit property was let out to the defendant on 4.2.1955. The suit for eviction was filed on the ground of default in payment of rent by the defendant and because of material alteration made by the defendant in the suit property and on the ground of personal bonafide necessity of the plaintiff.

The defendant contested the suit and denied that he took suit property on rent from the plaintiff on 4.2.1955. According to the defendant, he was minor on 4.2.1955. According to the defendant, the suit property was taken on rent by the defendant's father and he died three years ago only. Since the beginning of tenancy, the defendant was living with his mother in the rented premises. The defendant took specific plea that as per instructions of his mother, he started paying rent to the landlord and the rent was paid not only on behalf of the defendant alone but it was paid on behalf of his mother as well. The defendant denied other grounds and took a specific plea that the defendant's mother Smt.

Yasoda Bai (wife of original tenant) is necessary party in the suit, she being tenant in the suit property after the death of her husband.

Issues were framed by the trial court on 15.10.1974. Thereafter an additional issue no.6A was framed on 4.10.1976 and a further issue no.6B was framed on 14.9.1978. Issue No.6B was whether the defendant's mother Yasoda Bai was necessary party in the suit or not ?

In the year 1976, the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 was amended and by that, the legal heirs of deceased tenant also became entitled to avail the protection under the Act of 1950 on fulfillment of conditions of living with the tenant in the case of residential accommodation and doing the business in the case when the premises is commercial.

The trial court proceeded to decide the issue no.6B before deciding the suit by order dated 13.9.1979 and after relying upon the judgments of this Court, held that Yasoda Bai, wife of deceased original tenant is necessary party and by the same order dated 13.9.1979, the trial court directed the plaintiff to implead said Yasoda Bai as defendant in the suit.

On 27.9.1979, the date which was fixed for submitting amended plaint, it was submitted on behalf of the plaintiff that the plaintiff do not want to amend the plaint and also do not want to implead Yasoda

Bai as party defendant. Despite this fact of non-compliance of the order of the trial court dated 13.9.1979, the trial court did not dismiss the suit of the plaintiff for not impleading necessary party in the suit. However, the suit was dismissed by the trial court vide judgment and decree dated 26.10.1979 on merits on all other issues.

Being aggrieved by the judgment dated 26.10.1979, the plaintiff preferred an appeal. The appellate court by a brief order dated 6.8.1981 remanded the matter to the trial court after setting aside the judgment and decree of the trial court dated 26.10.1979.

The order of remand dated 6.8.1981 was challenged by the defendant by preferring S.B. Civil Revision Petition No.375/1981 before this Court. The order of the appellate court dated 6.8.1981 was set aside by this Court by judgment dated 12.1.1982. This Court observed that the appellate court should have examined the findings on issues no.4 and 6A and recorded its own finding on the basis of material on record. There was no necessity for further investigation in pursuance of the order of this Court dated 12.1.1982

The appeal was again heard by the first appellate court and was dismissed vide judgment and decree dated 21.7.1982. Hence, this second appeal.

The trial court as well as the first appellate

court both decided allegation of material alteration by the defendant against the plaintiff. The trial court decided the issue of personal bonafide necessity of the plaintiff against the plaintiff. The appellate court reversed that finding. However, the suit of the plaintiff was dismissed because of non-impleading of necessary party i.e. Yasoda Bai – mother of defendant, who is wife of deceased original tenant.

While admitting the second appeal, this Court framed following substantial question of law involved in this appeal :-

> "Whether Yasoda Bai mother of defendant Mohan Lal was a necessary party to the suit and if so the suit is liable to be dismissed on account of her non-joinder ?"

According to learned counsel for the appellant, the suit property was let out in the year 1955 and the original tenant Kishan Lal died before coming into force the amendment in the definition of tenant in the State Rent Act, therefore, the widow of original tenant was not necessary party in the suit. It is also submitted that the defendant himself was paying rent to the plaintiff and thereby he admitted that he alone is the tenant in the suit property. In view of the above,

two courts below committed serious error of law in dismissing the suit of the plaintiff.

Learned counsel for the respondent vehemently submitted that there is a specific plea of the defendant that his mother is necessary party. Despite this objection, the plaintiff did not choose to implead deceased tenant's wife as party in the suit. Not only this, the defendant's said plea was pressed by the defendant and he requested the Court to frame issue upon which the trial court framed the issue. The defendant further pressed this point before the trial court and the trial court passed the specific order on 13.1.1979 and directed the plaintiff to implead the tenant's wife as party in the suit but despite this order of the court below, the plaintiff refused to implead Yasoda Bai as party in the suit. Therefore, according to learned counsel for the respondent, the court below should have dismissed the suit forthwith on non-compliance of the order of the trial court dated 13.1.1979 and because of non-impleading the necessary party in the suit. Otherwise also, it is clear from the facts that the suit property was not taken on rent by the defendant as alleged by the plaintiff and in the year 1955, the defendant was minor. It is proved as a matter of fact that the suit property was let out to Kishan Lal when the defendant was minor and the

defendant took specific plea that he paid the rent not on behalf of himself alone but paid the rent on behalf of his mother also. In view of the above, in fact, the courts below have rightly dismissed the suit of the plaintiff and because of the reason that even if any decree is passed against the defendant alone, that decree cannot be binding upon other co-tenant who was found necessary party by two courts below and the decree cannot be executed against one of the heir of the original tenant. It is also submitted that Yasoda Bai was residing with her husband – deceased tenant and was paying the rent for the suit property and her right cannot be curtailed or decree for eviction can be passed without giving opportunity of hearing to the said tenant.

I considered the submissions of learned counsel for the parties and perused the record also.

It is true that the amendment in the State Rent Act, 1950 came into force after the death of original tenant but the plaintiff failed to plead that at the time of letting out the suit property, the tenancy was not heritable. The defendant's further plea was that the rent was paid by Yasoda Bai also and the defendant paid the rent as per the instructions of Yasoda Bai – his mother. In view of the above fact, Yasoda Bai was

tenant and in fact, it has not been seriously contested that Yasoda Bai was not tenant in the suit property after the death of Kishan Lal. It is not a case of sufficient representation of the Estate because of the simple reason that in the present case, the tenant has not died during the pendency of the suit where one of the legal representatives was also on record. It is not the case proved by the plaintiff that the defendant alone was the tenant in view of the admitted fact that in the year 1955, the defendant was minor and admitted fact that the defendant's mother and father were living in the premises in question. It is also not in dispute that original tenant Kishan Lal died a few years before the filing of the suit by the landlord. The plaintiff could have saved his suit by impleading necessary party in the suit and for that purpose, he got more than sufficient opportunity because the plea of non-joinder of the party was taken by the defendant in the written statement itself and further it was pressed by requesting the Court to frame issue on this question when originally, the issue was not framed by the trial court. That made the plaintiff to know that the defendant is seriously contesting on this issue. Not only this but before dismissing the suit for non-joinder of the necessary party, the trial court gave not only opportunity to the plaintiff to implead Yasoda Bai as party in the suit but directed the plaintiff to

implead Yasoda Bai as party. The plaintiff very specifically submitted before the trial court that the plaintiff does not want to implead her as party defendant in the suit. In these circumstances, the court below have no option but to dismiss the suit on account of non-joinder of necessary party and it is not a case where the plaintiff has not been given an opportunity to implead the necessary party.

In view of the above factual position, the trial court as well as the appellate court have not committed any error in dismissing the suit of the plaintiff for not impleading the necessary party. The substantial question of law framed by this Court is decided against the plaintiff/appellant.

Consequently, this appeal having no merit, is hereby dismissed with no order as to costs.

(PRAKASH TATIA), J.

S.Phophaliya